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Biography of
Abraham Clark Freeman

Sacramento, Calif.

1912

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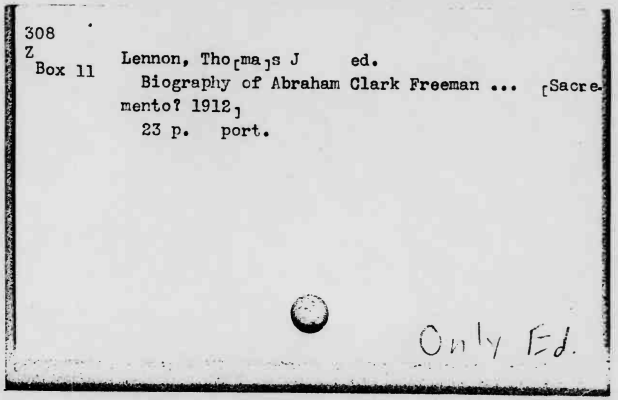

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Biography of Abraham Clark Freeman

EDITED BY

HON. THOS. J. LENNON

Presiding Justice First Appellate District
District Courts of Appeal of California

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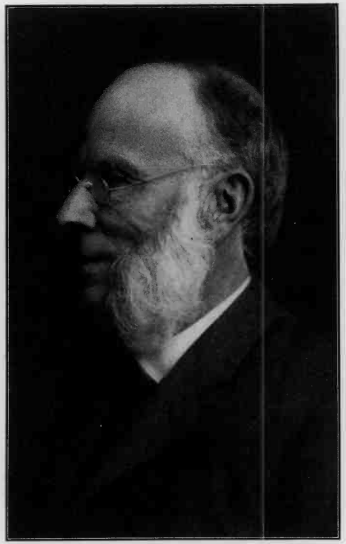

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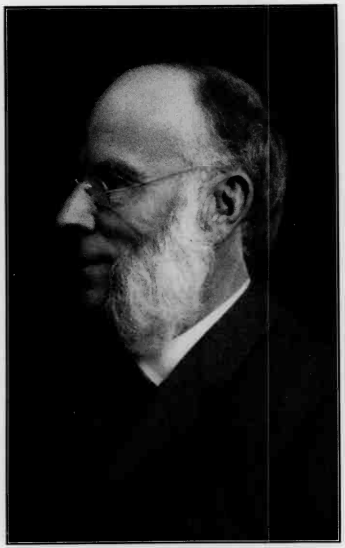

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"He seized, as it were, by intuition, the very spirit of juridical doctrines, though cased up in the armor of centuries; and he discussed authorities as if the very minds of the judges themselves stood disembodied before him."

CHAPTER I.

ABRAHAM CLARK FREEMAN was born in Bannock County, Illinois, May 15, 1843. He came from vigorous, but undistinguished, pioneer stock. In 1861 he moved with his parents to California. He was then a tall, angular, awkward boy of retiring disposition.

He began his legal studies in the office of Morris M. Estee, then District Attorney of Sacramento County, California. All his contemporaries bear witness that he was an indefatigable student to whom the law seemed a second nature. With that remarkable aptitude and industry which distinguished him in after years, young Freeman made rapid progress and was licensed to practice in 1868. In the interim, after his admission to the bar but before he had obtained an established practice, he wrote his first book, "Freeman on Judgments," which was published in 1873. It at once gave the author world-wide renown. A review of this book appearing in the American Law Review, Volume VII, pages 714 and 715, published in 1873, aptly summarizes Mr. Freeman's points of genius. Says the critic:

"Mr. Freeman has astonished us at every "point; and we venture to predict for him real

" eminence as a legal writer, if he continues to " devote himself to that department of the pro- " fession. Scholarly, modest, and unusually " lucid, both in general arrangement and de- " tailed expression, we have rarely found our- " selves able to give such hearty and deserved " praise to the works of an experienced writer, " much more to one whose name is, until now, " unfamiliar to the profession. . . .

"So many books are written apparently as " mere notes of study, mere means for the writer " to learn the branch of law which he assumes to " teach, that it is a novelty now to find a man " willing to become a full man before he mounts " the editorial chair. The condensed nutriment " Mr. Freeman gives is rarely met with in recent " books. . . .

"If Mr. Freeman will open a school to teach " the makers of law books how to do their work, " we will recommend more than one high dig- " nitary to go to it and sit at his feet. They " would stand a better chance to reach posterity " and we should find their lucubrations much " more valuable after a thorough training under " Mr. Freeman. It seems impossible for a " young lawyer to have composed so good a book " in so good a manner; yet it seems almost im- " possible that, if old in the law, so able a writer " should not have long since been familiar to the " profession everywhere; and we confess to a " painful doubt lest he turn out to be some emi-

" nent barrister, whom not to know is only to " confess our ignorance."

In 1874 he published a work on "Cotenancy and Partition," and in 1876 there was issued his learned and exhaustive treatise on the law of "Executions." All of these books at once took high rank and are everywhere regarded as scholarly treatises and standard authorities on the subjects dealt with.

But the writing of text books was a mere incident. Incessant work was the key note of his life. He rejoiced in it, as any one must who has the skill and strength to do it swiftly and well. He devoted thirty-two years of his life to his solution of the case law problem, in which he has builded for himself a monument that will endure as long as the law is administered.

He began this work in 1879, when he became the editor of the American Decisions. This undertaking involved the examination of all American State cases reported from 1760 to 1869, the elimination of those purely local to the jurisdictions in which they were decided, or obsolete in principle, and the reporting in an uniform series of the cases from each State that had an extraterritorial and present value. It was obvious that an enormous number of the cases decided before the Civil War were utterly obsolete and only served to pad an already redundant mass of adjudication. On the other hand, these early reports contained cases that,

on account of their universal application, the soundness of their doctrine, and the rare quality of their language will forever retain their authority. One needs only to turn to the opinions rendered by Chancellor Kent and his contemporaries an hundred years ago to be reminded of the firm foundation upon which our system of common law is based and the scholarly exposition of its basic principles there given. Mr. Freeman had a genius for the work. Long afterwards, in the light of what he had accomplished, Judge Seymour D. Thompson wrote of him:

"By natural ability and long experience, by " reason of the judicial bent of his intellect, his " industry, and his capacity for turning out work, " Mr. Freeman is peculiarly fitted for the work " of selection, begun over twenty years ago, and " continued without a break from that time to " this."

Judge Jonathan Haralson, of the Supreme Court of Alabama, adds: "Mr. Freeman is bet- " ter equipped for the selection and annotation " of cases than any man, or group of men, of " whom I have knowledge."

He did the work with the rapidity and certainty of accomplishment that marks the self-known master of the science of jurisprudence. None who are familiar with his work can fail to appreciate his extraordinary intellectual powers, especially as revealed in his grasp of legal principles. There was nothing academic

in his thought. He would glance over page after page of abstruse opinions with the ease and rapidity with which the average person looks over the headlines of a morning newspaper, yet a material point never eluded him. Chief Justice Whitfield, of Mississippi, has said that he regarded Mr. Freeman as one of the ablest law analysts. It was this power of analysis, this ability to lift the living principle out of the confusion of facts in which it was presented in the case, which made it possible for him to select those cases that would live as authorities.

Hon. William R. Lawrence writes:

"The care, judgment and skill of the editor " (Mr. Freeman) in the selection of cases from " the many tens of thousands that have been " poured forth from the courts of the states, and " the remarkable accuracy of his notes, not one " of which has been misleading, so far as I know, " have made him a benefactor to his brethren " of the bench and bar, an honor to his profes- " sion, and a bright particular light in the legal " literature of America."

In 1886 he completed the American Decisions which, in one hundred volumes, contain all the cases from the first one hundred and ten years of American Jurisprudence that have an extra-territorial and present value. The certainty that, for the period covered by it, this set of reports contains only those cases, and all of those cases, in which judicial pronouncement has been

given to the living principles of the law, is established by the fact that the cases in the American Decisions have been cited by courts of last resort nearly three hundred thousand times. For a great number of legal principles these powerful and fundamental decisions have furnished the whole of the foundation, and much of the superstructure, of the jurisprudence of every State in the nation. Their influence has been, and is, co-extensive with Anglo-Saxon jurisprudence. Their authority, and value as precedents, will be co-existent with the forever living principles of right by which the affairs of civilized men are governed. To Mr. Freeman is due the credit for lifting these cases from the wilderness of redundant and obsolete adjudication in which they were often lost, and making them available to lawyers everywhere by setting them out as an unit in the American Decisions.

In 1886 Mr. Freeman became editor of the American State Reports, in which are reported cases of general and permanent value and importance from that date to the present time. In 1888 Mr. Freeman's publishers purchased from John D. Parsons, Jr., of Albany, N. Y., the American Reports, which, in sixty volumes, give the important decisions of the several state courts from 1869 to 1886. Thus they form a link in the connected series in which they are immediately preceded by the American Decisions and followed by the American State Reports.

Chapter II.

The American State Reports, from the very beginning, had a full-orbed promise of great success. Mr. Freeman was universally recognized as a master of the work. A series of selected cases was no longer an experiment, but an established necessity. Indeed, it is still a mooted question as to whether or not the best of the reported cases are not more serviceable to courts and lawyers than all of the reported cases. Practical tests of the question lead to an affirmative answer. It is certain that questions involving purely local pleading, practice and statutes are the pivotal points of at least fifty per cent of the cases decided in any jurisdiction, and that such cases have no extraterritorial value. If a lawyer in any State had all of the reported cases of any other State, or all other States, fifty per cent of them would, on this account, be merely an incumbrance. Of the remaining fifty per cent of the extraterritorial cases the substance of perhaps a majority of the opinions would be the mere citation to other cases, or quotation from other cases, in which the principle of the citing case had been exhaustively considered, logically stated and finally settled in the particular jurisdiction. The weight of authority is not in the

number of cases, nor in the recentness of them, but in the sound judicial learning, legal logic and common sense expressed in the opinions of the court. Cases in which these were not to be found would be also a mere incumbrance. In every investigation, after examining all cases on the point, a few of the best considered are selected and made the basis of the brief or argument. If, under one digest alphabet, there could be reported on every point of law the few best considered cases which every capable and careful searcher for authority would, after examining all the cases, select as the basis of his brief or argument, certainly that set of reports would be a complete solution of the case law problem. It follows that the real need will always be, not for all the reported cases, but for a selection whereby all the cases of a purely local color, or without intrinsic merit, are eliminated, and only those of general and permanent value and importance are retained. When the great disparity of the cost of all the reported cases and the cost of the selection which gives the service of all the reported cases is considered, the conclusion in favor of the selection becomes reasonably certain. When the enormous time and labor-saving utility of the selection is considered, this conclusion becomes indubitably true.

The law is a science of principles, not a catalogue of single instances. Mr. Freeman so conceived of it, and thus reduced it to an exact

science, for the number of its principles is a mathematical certainty. As an exact science, he has completely stated it in the cases selected for the American State Reports. During the past twenty-five years practically all of the earlier cases have been reviewed, and the principles of them given a new judicial pronouncement, while the progress of commerce, and invention, have necessitated new subject divisions of the law. Therefore, from these modern cases he has been able to make a selection that, with mathematical certainty, covers all legal principles.

When he began the work on the American State Reports, Mr. Freeman had added to his native genius his experience with the American Decisions and had fully developed and firmly established the science of selection. His unparalleled proficiency for the work has made the American State Reports an almost perfect statement of all legal principles, and has given to the profession in one hundred and forty volumes a working equivalent of all reported cases.

The success of this series brought competitors into the field, but no competitor could find a genius like Mr. Freeman. It is, indeed, seldom that history produces such a mind. Two of the greatest jurists of their generation, Chief Justice McClellan, of Alabama, and Chief Justice Simmons, of Georgia, unqualifiedly declare: "The "American State Reports are, in our opinion, "the most valuable reports ever published."

The whole of both Supreme Courts concurred in the opinion. The same emphatic statement of their unrivaled excellence has been made by thousands of lawyers and judges in all parts of the country.

CHAPTER III.

This biography is climactic. The greatest achievements of Abraham Clark Freeman remain yet to be mentioned.

Reviewing "Freeman on Judgments," the critic said: "We venture to predict for him real "eminence as a legal writer, if he continues to "devote himself to that department of the pro-"fession." (Pages 5 and 6, *infra.*) This reviewer was prophet as well as critic. If Mr. Freeman had written text books on every subject division of the law, it is certain that each of them would have taken rank as a scholarly treatise and standard authority. The fact is that he has not only written text books on every subject division of the law, but has written elaborate text treatises on practically every minute subdivision of every main subject division. These treatises are published as annotations, or notes to the cases reported in the American State Reports, and as stated by Judge H. G. Connor, of the Supreme Court of North Carolina (now U. S. District Judge): "are exhaustive, accurate and may be "relied upon with safety." Judge G. H. Brown, Jr., of the same court, adds: "The annotations "by Judge Freeman are of the greatest value

" and assistance and cannot be too highly recom-
" mended as legal classics."

As the inclusion of these notes in the American State Reports was a part of the original plan, it will be of interest to consider again the full scope of the work. The entire field of legal principles is covered by the cases reported in this series. The close principle of each particular case is made the subject of an elaborate monographic note in which is given a complete statement of every phase of that principle which has resulted from the judicial considerations of it by the courts of America and England, and an exhaustive review of the cases in which the principle had been applied. Since there are cases upon every close point it follows that there is a note upon every close point, and the scope of the notes being commensurate with the scope of the cases, they, too, cover the whole range of legal principles.

The need for, and value of, such work is apparent. Text books on the main subject divisions of the law often fail to treat the minute subdivisions, or treat them so meagerly as not to meet the requirements of the profession, for it is in the narrow niches of the law that the perplexing questions are continuously arising. Cyclopedias and general digests are merely catalogues of single instances. There is seldom to be found in them a scholarly discussion of principle. They state the law as a fact and, in most

instances, leave the lawyer without a reason for the rule. Moreover, they more often fail to cover the narrow niches of legal principle than the text books. "We have never failed to find
" (in Mr. Freeman's notes) an exhaustive and
" luminous discussion in some one of your re-
" ports when a question of real difficulty was
" presented," says Judge W. J. McAllister, for the Supreme Court of Tennessee. Judge N. M. Neill, of the same court, writes: "Nothing that
" I could say would add anything to the high
" estimate with which Mr. Freeman's work as
" annotator is held everywhere."

In the American Law Review of 1898, Judge Seymour D. Thompson made the following statement regarding Mr. Freeman's notes in the American State Reports:

"It is our deliberate judgment that if this
" enormous mass of annotations, written as it is
" in careful text-book form, built up with such
" consummate skill and such patient diligence,
" were collected, arranged, filled out where nec-
" essary, and printed in the form of an abridg-
" ment, no similar publication could hold the
" field. It would stand against every competitor
" and would not be subject to the reproach that
" its editors and publishers have stolen the works
" of jurist writers and used the works of such
" writers to destroy their own market."

Since 1898 there have been written and published in the American State Reports twenty-

five thousand pages of these annotations, which "fill out where necessary" and make the abridgment complete.

Indeed, if these notes or annotations were taken out of the American State Reports, grouped by subjects and printed alphabetically by titles, they would run into more than forty volumes and would, as stated by Judge Peter J. Shields, of the Superior Court of California, "constitute a voluminous and exhaustive, and "at the same time, an accurate and concise ency-"clopædia of the law as recognized and admin-"istered wherever judicial proceedings are con-"ducted in the English language."

Again quoting from the critic prophet of 1873: "The condensed nutriment Mr. Freeman "gives is rarely met with in recent books." (Page 6, *infra.*) It is a great art to give succinctly in a few lines the full substance of what often makes several pages of redundancy. Of that art Mr. Freeman was the master. In his ability to weave out of the tangled mass of particular instances a texture of regular pattern, and to bring coherence out of confusion, he has no equal. This was aptly illustrated by the dean of a certain well-known Eastern law school in his reduction of a ponderous legal fraction to its lowest denomination. As the numerator he had copied from a work on evidence the author's definition of a Presumption of Law, and as the denominator, he took the same author's definition of a Presumption of Fact. The unreduced fraction covered a full sheet of legal paper. After several intermediate reductions he had, as the lowest denomination, a few lines which gave a clear, concise, complete statement of what was confusedly stated in the unreduced fraction. Pointing to the lowest denomination, he said: "That is the way Mr. Freeman would have stated it at first."

"I think he (Mr. Freeman) has no superior, "and perhaps no equal, in his ability to analyze "cases, and note the principles of law to be de-"duced from the vast number of judicial deci-"sions issuing from the courts of the United "States and England," says Judge C. A. Woods, of the Supreme Court of South Carolina.

This power of analysis was the distinguishing characteristic of his work. He would examine an hundred cases on a topic of law, and, in his analytical mind, they were segregated and classified as they were examined, and the result was a concise and lucid statement of the principles involved. To him the work of distinguishment and differentiation was easy, while to another legal mind there were, in the same hundred cases, irreconcilable confusion of principle and contrariety of decision. All his work bears witness that to him the law was a second nature. When one considers that there are two hundred and forty volumes in the American Decisions and American State Reports, containing nearly

forty thousand cases which give the strongest judicial pronouncement to the legal principles decided during one hundred and thirty-five years of American jurisprudence, and more than forty volumes of these notes, each line making concise, lucid and luminous statement of legal principle, something of the vast achievement of this wonderful man dawns upon the mind.

Since the advent of the case lawyer, the mere searcher of the catalogue of single instances, rather than one who is, or seeks to be, master of legal principle, the decadence of jurisprudence has been marked. Perhaps the deterioration of the law from a learned profession into a commercial pursuit has had much to do with it. But whatever may be the tendencies of the times, really great legal minds are as much appreciated, and more needed, to-day than ever before. Mr. Freeman has done much to stem this tide of decadence and uphold the standard of the law. Where he has found the courts wrong in principle, he has unhesitatingly said so, and instances are numerous where his criticism of cases has been followed as authority instead of the cases criticised. Continual reading of literary classics makes a cultivated and capable literary mind. Continual reading of legal classics, or the using of them in daily work, makes a cultivated and capable legal mind. The monographic notes in the American State Reports are legal classics.

As yet nothing has been said of the personal character of this great man. We let those speak who were his life-long friends and associates. The following excerpts from the resolutions of the Sacramento County, California, Bar, adopted May 17, 1911, are a fitting tribute:

"His entire life was one of ceaseless industry. "The amount of work done by him was pro- "digious, and the ease and accuracy with which "he accomplished it were among his distin- "guishing traits. But his life of steady toil in "no wise narrowed or hardened him. He at all "times remained generous, cheerful and hope- "ful, and took at all times an active interest in "the affairs of his time. His views were pro- "gressive; he accepted the developments of "progress with the confident faith that they "could be and should be made to work out only "human betterment. He was free from egotism "and possessed of a natural diffidence which, "sometimes misunderstood, made him appear to "strangers to be distant, cold, and proud. Yet "he possessed social talents of a high order, and "to the fortunate few to whom he revealed him- "self he disclosed a variety of interest, a depth "of wisdom, a richness of humor, and a sympa- "thetic disposition both marvelous and charm- "ing. With his friends he was the most agree- "able, entertaining and loving companion. He "was unspoiled by success and had that gentle-

" ness and simplicity which mark true great-
" ness. . . .

"Abraham Clark Freeman was a man of great
" but quiet courage. The well-matured convic-
" tions which he possessed he was ready on all
" proper occasions strongly, but modestly, to
" assert and defend. All his writings disclose
" that he was master of a clear, elegant, and
" forceful expression. Few writers have equaled
" him in terseness and accuracy. With remark-
" able ease and readiness he would grasp and
" solve the most confused and apparently intri-
" cate questions, quickly stripping the contro-
" versy of non-essentials and disclosing the sim-
" ple principle involved.

"As a writer of law books, and an author of
" legal literature, Mr. Freeman stood in the
" front rank. High authorities have spoken of
" him as the most able law writer of his time.
" . . .

"The value of the life work of this man cannot
" be overestimated. He was a strong factor in
" the reformation of the literature of the law,
" and a powerful influence for uniformity of
" law and procedure throughout the nation.
" His legal writings have been so voluminous,
" varied and accurate as to cover the entire field
" of Anglo-Saxon jurisprudence. His work has
" left a permanent impression on social order,
" and helped to elucidate and simplify the prin-
" ciples by which men are held together in civ-

" ilized society. His friends, those who best
" knew his power, would have liked to have seen
" him become a great judge, or placed in some
" conspicuous political position where his abili-
" ties would have been more noted and ap-
" plauded. But it was probably better that his
" great work should have been done as it was,
" quietly and inconspicuously, and in steadily
" helping to build strong and sure the founda-
" tions of society. He worked faithfully to the
" end and died quietly in his home in San Fran-
" cisco on April 11, 1911.

"The Bar of Sacramento, of which he was for
" so many years a brilliant ornament, and to
" many of whose members he was a loving and
" helpful friend, offers this tribute to the life
" and labors of Abraham Clark Freeman. We
" offer his life as an example of great talents
" nobly used. We offer his work as a lawyer as
" a model and inspiration to the profession. . . .

"The splendid usefulness and simple dignity
" of this great man's life forbid further words
" of eulogy."

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